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Dkt. 43016-B/JPW/SHS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Philip Livingston and Friedhelm Helling
U.S. Serial No.: 08/477,097 Group Unit: 1645
Filed : June 7, 1995 Examiner: A. Caputa
For : GANGLIOSIDE-KLH CONJUGATE VACCINE PLUS QS-21

1185 Avenue of the Americas
New York, New York 10036
May 17, 1999

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

**COMMUNICATION REQUESTING CONSIDERATION ON
THE MERITS OF A FIRST SUBMISSION AFTER FINAL
REJECTION AND WITHDRAWAL OF FINALITY UNDER 37 C.F.R.
§1.129(a) AND PETITION FOR A FIVE MONTH EXTENSION OF TIME**

This Communication is submitted pursuant to the provisions of 37 C.F.R. §1.129(a) to request consideration on the merits of an Amendment in Response to April 15, 1998 Final Office Action as a First Submission in Response to the April 15, 1998 Final Office Action and withdrawal of finality of the April 15, 1998 Office Action.

On April 15, 1998, the United States Patent and Trademark Office issued a Final Office Action in connection with the above-identified application. A response to the April 15, 1998 Final Office Action was originally due on July 15, 1998. A Petition for a Three Month Extension of Time was filed on October 15, 1998. A Notice of Appeal was filed on October 15, 1998 and an appeal brief was due on December 15, 1998. Applicants hereby request a five-month extension of time. Applicants have previously established small-entity status. The fee for a five-month of extension of time for a small entity is \$925 and under 37 C.F.R. §1.17(r) the fee for filing a submission after final rejection is \$380 and the fee for additional claims is \$36.00. Applicants enclose a check in the amount of \$1341.00 to cover these fees. Accordingly, the subject application is pending.

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01 FC:028
02 .0243

03 0250

925.00 JP
380.00 JP

36.00 JP

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Therefore, the Amendment, attached hereto as Exhibit A, is now due May 15, 1999 and is being timely filed. Since May 15, 1999 is a Saturday, under 37 C.F.R. 1.7, a response is due on the next day which is not a Saturday, Sunday or federal holiday. Accordingly, a response is due Monday May 17, 1999. Accordingly, this response is timely filed.

Under 37 C.F.R. §1.129(a), applicants in an application that has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365 (c), are entitled to have a First Submission entered and considered on the merits after final rejection if the First Submission and the fee set forth in §1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application.

For its earliest priority date, the subject application claims priority of U.S. Serial No. 08/009,268, filed January 22, 1993. Therefore, taking into account this priority reference this application has been pending for at least two years as of June 8, 1995. This Communication is prior to the filing of an Appeal Brief and prior to abandonment of the subject application. Accordingly, the First Submission in Response to the April 15, 1998 Final Office Action under 37 C.F.R. §1.129(a) is being timely filed.

The fee under 37 C.F.R. §1.17(r) for consideration and entry of a first submission after a final rejection is \$380.00. As stated hereinabove, applicants enclose herewith a check which includes this fee.

Under 37 C.F.R. §1.129(a), the finality of the final rejection is automatically withdrawn upon the timely filing of the First Submission and the payment of the fee set forth in §1.17(r). Accordingly, applicants respectfully request that the finality

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of the April 15, 1998 Final Office Action be withdrawn and the Amendment in response to the April 15, 1998 Final Office Action be considered as the First Submission.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants's undersigned attorney invites the Examiner to telephone at the number provided below.

No fee, other than the \$925 fee for a five month extension of time and the \$380.00 fee under 37 C.F.R. §1.17(r) and \$36.00 for additional claim fees are deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

Albert Wai-Kit Chan

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:
Assistant Commissioner for Patents,
Washington, D.C. 20231.

Albert Wai-Kit Chan

5/17/99
Date

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